

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

FRANK KRASNER ENTERPRISES, LTD. *
d/b/a SILVERADO PROMOTIONS and
SILVERADO GUN SHOW, et al. *

Plaintiffs *

vs.

*CIVIL ACTION NO. MJG-01-1831

MONTGOMERY COUNTY, MARYLAND *

Defendant *

* * * * * * * *

JUDGMENT ORDER

By separate Order issued this date, the Court has resolved all
pending Matters.

Accordingly:

1. Judgment shall be, and hereby is, entered in favor of
Plaintiffs against Defendant reinstating the Judgment
Order issued October 4, 2001.
2. Any and all prior rulings disposing of any claims
against any parties are incorporated by reference
herein.
3. This Order shall be deemed to be a final judgment
within the meaning of Rule 58 of the Federal Rules of
Civil Procedure.

SO ORDERED, on Friday, 5 December, 2003.

_____/ s /_____
Marvin J. Garbis
United States District Judge

CLERK OF COURT

DEC 05 10:42

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PROMOTIONS AND SILVERADO GUN *
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Plaintiffs

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MONTGOMERY COUNTY, MARYLAND *

Defendant *

* * * * * * * *

MEMORANDUM AND ORDER

The Court has before it Defendant's¹ Motion to Dismiss [Paper 56] and Motion for Certification of the State Law Preemption Question to the Court of Appeals of Maryland [Paper 59], as well as the materials submitted by the parties related thereto. The Court has held a hearing on the issues presented and has had the benefit of the arguments of counsel.

I. BACKGROUND

The pertinent facts are set forth more fully in this Court's initial decision herein, Frank Krasner Enterprises, Ltd. v. Montgomery County, 166 F.Supp.2d. 1058 (D. Md. 2001) (hereinafter "Krasner I"). In brief, Plaintiff Frank Krasner

¹ Defendant Montgomery County, Maryland is referred herein as the "County."

and his company, Frank Krasner Enterprises, Ltd., d/b/a Silverado Promotions and Silverado Gun Show ("Krasner") have presented gun shows at various locations in Maryland, including the Montgomery County Fairgrounds Agricultural Center ("Ag Center") in Gaithersburg for more than ten years. Plaintiff RSM, Inc. d/b/a Valley Gun and Police Supply ("RSM"), a firearm dealer licensed in Maryland, has regularly exhibited at Krasner's gun shows, including those presented in Gaithersburg. Plaintiff Robert Culver ("Culver") is a member of Montgomery Citizens for a Safe Maryland ("MCSM"), an organization dedicated to promoting gun ownership rights which has regularly promoted its views at Krasner's gun shows, including those presented in Gaithersburg.

In May 2001, the County amended its Code to prohibit financial support to organizations, such as convention centers, that allow the display and sale of guns on their premises. Montgomery County Code § 57-13. Shortly thereafter, the Ag Center ceased to host Krasner's gun shows.

Krasner, RSM, and Culver brought suit to challenge the County enactment as violative of their federal constitutional rights and of "home rule" provisions of Maryland Code, Art.

23A § 2B.² This Court held that the Montgomery County Code amendment constituted an attempt to regulate the sale of firearms in Gaithersburg. Krasner I, 166 F.Supp.2d. at 1063. Because Gaithersburg had previously been granted authority to regulate firearms sales,³ the Court held that the County exceeded its authority under the Tillie Frank law. Id. The County was enjoined from enforcing the Code provision at issue against the Ag Center with regard to Krasner's gun shows. The Ag Center, thereupon, resumed hosting Krasner's gun shows. Pls.' Mem. in Opp'n to Def.'s Mot. to Dismiss at 4.

On appeal, the United States Court of Appeals for the Fourth Circuit vacated this Court's Judgement due to the absence of an express decision that the Plaintiffs had standing to proceed. The appellate court remanded the case with instructions to determine whether each of the Plaintiffs had standing. The appellate court also noted that this Court was free "to certify the state law issue to the Court of

² Section 2B, known as the "Tillie Frank law" (after the Maryland case that it abrogates), states that "legislation enacted by a county does not apply in a municipality" if such legislation relates to a subject matter over which the municipality has a prior grant of authority.

³ Md. Code, Art. 27 § 36H(b).

Appeals of Maryland" if it held that any Plaintiff had standing. 60 Fed. Appx. 471.

II. DISCUSSION

A. The Legal Requirements of Standing

Federal courts have authority to adjudicate only matters that present bonafide "cases" or "controversies." U.S. Const. Art. III, § 2. Litigants must have personal stakes in a lawsuit; this assures "that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends." Baker v. Carr, 369 U.S. 186, 204 (1962). This also assures a "properly limited... role of the courts in a democratic society[,]" as generalized grievances are reserved for consideration by other branches of government. Warth v. Seldin, 422 U.S. 490, 498 (1975).

1. Particular and Actual Injury

The core requisite of standing is that a plaintiff allege a particular injury. Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871 (1990). In scrutinizing litigants' standing, a court should question whether litigants allege harms that impact specifically upon them and upon their legally protected interests. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560

(1992) (hereinafter "Lujan II"). Such harms must "be expressible in terms of [a party's] concrete satisfactions or experiences." Lawrence E. Tribe, American Constitutional Law § 3-16 at 117 (2d ed. 1988). Moreover, a party's injury must be actual or imminent; it cannot be overly speculative. See City of Los Angeles v. Lyons, 461 U.S. 95 (1983).

2. Causation and Redressability

In addition, to establish standing, a litigant must show that the claimed injury is caused by the conduct of which he complains. Lujan II, 504 U.S. at 560-1. It must be likely that the injury will be redressed by a favorable judicial decision. Id.

B. Application of Principles

1. Particular and Actual Injury

There is no doubt that each of the Plaintiffs will suffer a detriment if the Ag Center ceases hosting Krasner's gun shows. Moreover, none of the Plaintiffs have transferred or surrendered the rights that they assert here. Accordingly, Burke v. City of Charleston, 139 F.3d 401 (4th Cir. 1998) (denying plaintiff standing on the basis of his having contractually relinquished his First Amendment rights) is

inapposite. The question that remains, however, is whether the detriment suffered by each Plaintiff suffices to confer standing.

The Court finds that Krasner, most definitely, has stated a particular and actual injury. Without access to the Ag Center, Krasner can no longer host gun shows of the magnitude to which he was accustomed. It is, indeed, doubtful that there is any reasonably adequate facility for Krasner's gun shows in the County other than the Ag Center. Krasner will be specifically injured and will suffer a direct loss of revenue and goodwill.

The question presented is closer as to RSM. If the Ag Center refuses to host Krasner's shows, RSM will lose the opportunity to exhibit and thus sustain some loss of revenue and good will. Moreover, the specific activity at which the Code provision is directed - the display and sale of guns - is engaged in by RSM.

Of course, MCSM lost a forum that it had used to spread its message. MCSM member Culver thus states a harm of sorts, namely a deprivation of his liberty. On the other hand, the harm Culver alleges is attenuated and not an infringement of his legally protected interests. He would remain free to conduct his expressive activities at other locations in the

County, including the County Fair. Moreover, inasmuch as Culver seeks to engage in relatively unrestricted activity,⁴ the damage he would suffer could be viewed as too collateral to warrant a finding that he would have standing. Indeed, it would appear that everyone who did anything at all in connection with the Krasner gun shows - including, for example, food vendors, attendees, parking lot attendants etc. - could be considered in the same position, standing-wise, as Culver. Thus, the Court does not find Culver to have standing to proceed as a Plaintiff herein.

2. Causation and Redressability

Krasner's and RSM's injuries are, in every meaningful sense, caused by the County's 2001 legislative enactment. For ten years prior to the enactment, the Ag Center hosted Krasner's shows. Compl. ¶ 7. About a month after the enactment, the Ag Center stopped hosting the gun shows. Pls.' Ex. A. About a month after this Court enjoined enforcement of the enactment, the Ag Center resumed hosting the gun shows, and it has hosted them since. Pls.' Mem. in Opp'n to Def.'s Mot. to Dismiss at 4. The Ag Center's actions are not

⁴ As compared to RSM, whose permissible venues for gun sales are strictly regulated.

"independent" of the County's actions. They are a result of the County's enactment, as are Plaintiffs' injuries.

Furthermore, Krasner's and RSM's injuries are redressable, as this Court might bar the application of § 57-13 in Gaithersburg. Of course, as Defendants note, "[the Ag Center] still would be free to refuse, for any number of reasons, to host gun shows." Mem. in Supp. of Def.'s Mot. to Dismiss at 7. However, standing only requires that an injury will likely be redressed by a favorable decision. Lujan II, 504 U.S. at 560-1. While Article III does not demand judicial clairvoyance, in the instant case it is highly likely that, unless prohibited from doing so, the Ag Center will host Krasner's gun shows.

In sum, the Court finds that Krasner and RSM have standing to proceed herein but that Culver does not.

C. Certification

Section 12-603 of the Maryland Code provides:

"The Court of Appeals of this State may answer a question of law certified to it by a court of the United States... if the answer may be determinative of an issue in pending litigation in the certifying court and there is no controlling appellate

decision, constitutional provision, or statute of this State."⁵

The Certification Act sets forth the conditions subject to which the Maryland high court may answer a certified question of law. The Act does not require this federal Court to certify any questions, though it does suggest circumstances in which it may be appropriate for the Court to do so.

The Court has, as suggested by the United States Court of Appeals for the Fourth Circuit, considered whether it should certify any of the questions presented in this case to the Maryland Court of Appeals. The Court has decided not to certify any questions but recognizes, of course, that the United States Court of Appeals for the Fourth Circuit may decide to do so.

This Court is by no means certain that the key question presented, concerning the nature of Montgomery County Code § 57-13, is one of state law interpretation rather than of the application of relatively clear state law to reach a conclusion on the undisputed operative facts presented. The instant case does not present the question of what the Tillie

⁵ Md. Code Ann., Cts. & Jud. Proc. § 12-603 (hereinafter, the "Certification Act").

Frank law means.⁶ Rather, the instant case requires the application of state law to determine whether a County Code provision, § 57-13, is a "regulatory" or "revenue" measure on the basis of its effects, as established by the evidence.

If the United States Court of Appeals for the Fourth Circuit decides to certify "the state law issue" to the Maryland Court of Appeals, it will be more able than this Court to identify the precise question(s) it wishes addressed by the state court and which it chooses to reserve for federal appellate decision. Accordingly, this Court will not certify any questions to the Maryland Court of Appeals but will defer

to the United States Court of Appeals for the Fourth Circuit to decide the issue in this regard.

III. CONCLUSION

For the foregoing reasons:

1. Defendant's Motion to Dismiss [Paper 56] is DENIED IN PART AND GRANTED IN PART.
2. Defendant's Motion for Certification of the State Law Preemption Question to the Court of Appeals of Maryland [Paper 59] is DENIED.

⁶ To explain... the meaning of a law, in this way, would be to "interpret" that law. Webster's II New College Dictionary 579 (1999).

3. Inasmuch as there remain no further issues for resolution, Judgment shall be entered by separate Order.

SO ORDERED, on Friday, December 5, 2003.

_____/ s /_____
Marvin J. Garbis
United States District Judge